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Category



OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[James L. Hankins](#),
Publisher

(with special thanks to Mark Hoover, OIDS, for contributing regularly)

“I have lived my life, and I have fought my battles, not against the weak and the poor—anybody can do that—but against power, against injustice, against oppression, and I have asked no odds from them, and I never shall.”---Clarence S. Darrow, *Attorney for the Damned* 491, 497 (Arthur Weinberg ed. 1957).

OKLAHOMA

No new published cases. No new unpublished cases of note.

TENTH CIRCUIT

[United States v. Jeffery Denton Sumka](#), No. 22-7023 (10th Cir., September 6, 2023) (Published) (Hartz, Seymour & Matheson) (E.D. Okla., Hon. John F. Heil, III): **Federal Sentencing Guidelines (Child Sexual Abuse)**: Sentence in a child sexual abuse case is affirmed over claims related to sentencing enhancements for

having undue influence over the child, engaging in a pattern of illegal sexual conduct, and having committed the offense involving a vulnerable victim.

[United States v. Diamond Levi Britt](#), No. 22-7012 (10th Cir., August 31, 2023) (Published) (Bacharach, Kelly & Briscoe) (E.D. Okla., Hon. John F. Heil, III): **Self-Defense (Imperfect Self-Defense)**: Britt was convicted of murder in Indian Country. He raised a claim that the district court erred by refusing his counsel's request to instruct the jury on the theory of imperfect self-defense. The panel agreed and reversed. NOTE: Judge Kelly dissented.

[Isaiah Glenn Dell Tryon v. Christe Quick, Warden](#), No. 21-6097 (10th Cir., August 30, 2023) (Published) (Holmes, C.J., Phillips & McHugh) (W.D. Okla., Hon. Bernard M. Jones): **Habeas Corpus (Capital Habeas Cases); IAC (Appellate Counsel); Cumulative Error**: In this capital habeas case out of Oklahoma, the panel affirmed the denial of relief over claims relating to: 1) denial of expansion of the COA; 2) IAC appellate counsel for not arguing that trial counsel was ineffective for not obtaining and presenting neuroimages; 3) IAC appellate counsel for not raising IAC on trial counsel for not rebutting evidence of a 2009 jail fight; and 4) cumulative error.

UNITED STATES SUPREME COURT

“Only Supreme Court justices and schoolchildren are expected to and do take the entire summer off.” –*Chief Justice John Roberts* (statement made while he served as a lawyer in the Reagan Administration).

No new cases.

OTHER CASES OF NOTE

[United States v. Nicole Elizabeth Foreman](#), No. 21-50986 (5th Cir., October 18, 2023): **Hearsay; Confrontation and Cross; Evidence (Business Records)**: Conviction for transporting illegal aliens is reversed because the Government used inadmissible evidence (immigration G-166F form was hearsay and violation of

Confrontation) to prove that the person being transported was in the United States unlawfully (an element of the offense).

[United States v. Joseph Samir Zakhari](#), No. 22-5328 (6th Cir., October 23, 2023):

Interrogations (Fifth Amendment); Prosecutorial Misconduct (Vindictive Prosecution): Convictions for various child sexual offenses are vacated because a motion to suppress statements during interrogation should have been granted based upon invocation of the right to counsel; and the panel remanded for the district court to consider a motion to dismiss based on prosecutorial vindictiveness.

VICTORIES

[JEREMY BENNETT](#), Ottawa County, secured a dismissal with prejudice in an unusual manner where the State was going to use the preliminary hearing transcript because the complaining witness refused to testify at trial (client was accused of sexual assault of his daughter). At a motion hearing about 30 minutes prior to trial, with jurors sitting outside the courtroom, the State provided Triple I's and resumes for witnesses (over 500 pages). Jeremy moved to preclude the State from calling all its witnesses for failure to follow discovery rules. Motion granted! After more discussion, he moved to dismiss with prejudice. That motion was granted! Great win in a case where the rec was 10-in/10-out. Great job, Jeremy!

CHARLES FOX, Tulsa, reported that he recently tried a case in Wagoner County where he represented a client accused of misdemeanor Domestic A&B in the Presence of a Minor, and Domestic A&B. Not guilty on both counts. The prosecutor was Justin Vann. Great job, Charles!

HEARSAY

[NOMINEE](#): Gov. Stitt has raised political issues for consideration in the nomination of Sarah Hill to the federal bench.

[RIP](#): Retired Judge Charles A. Johnson passed in the latter part of August.

[BUST](#): A Chinese national was caught with 268 pounds of marijuana and \$100,000.00 in cash.

INVESTIGATION: Garfield County judge Hon. Brian Lovell, under investigation in Oklahoma for a drive-by shooting, has hired Stephen Jones to represent him in Oklahoma (but not on the other pending matter in Texas). Also, prosecutor Mike Fields has recused himself from prosecuting the case.

CROWDED: The Wagoner County Jail is experiencing overcrowding.

SHOOTING: The shooting in the Oklahoma County Courthouse parking lot was apparently gang-related.

LICENSE: A new driver's license system is coming to Oklahoma.

RETIRING: District Attorney Mike Fields is stepping down in January.

ORANGE ALERT: DOC's "Orange Alert" which notifies citizens of escaped inmates, is now operational.

WEWOKA: Citizens in the town of Wewoka believe that they are experiencing a rash of violence.

AI: The next legislative session may include a bill outlawing "image-based" sexual abuse which will prohibit AI images.

NEW BOARD: The Attorney General now has a Domestic Violence Fatality Review Board.

DEATH: An inmate has died at LCF.

WACKY CRIME

MARLOW: A man in Marlow beat another man...with a fire extinguisher.

FAST CAR: A man in Missouri walked onto a car dealership, asked to see the fastest car on the lot...and then stole it.

PUMPKINS: The world's best pumpkin carver is from Oklahoma, and his creations are amazing.

OU: A man in Norman has left...interesting...items on the porch at OU's Tri-Delt sorority.

T-SWIFT: Someone in Tulsa stole a cardboard cut-out...of Taylor Swift. It has since been returned.

FIRST-WORLD PROBLEMS: Nichols Hills has been grappling with the problem of...kids driving golf carts in a reckless manner.

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